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DESCRIPTION	PROPRIETARY	VOLUME NUMBER	BATES # RANGE
Letter Brief from A. Babineau (BA-NJ) to J. Nappi (NJ BPU) consisting of BA-NJ's Initial Brief regarding NJ BPU's review of the parties' Interconnection Agreement, Docket No. TO96070519, dated August 15, 1997		XI	JA 3765 – JA 3769
Letter from A. Babineau (BA-NJ) to J. Nappi (NJ BPU) supplementing BA-NJ's 8/5/97 letter re: (1) footnotes in Attachment 1 and (2) rates to be used where not specifically announced at the NJ BPU's 7/17/97 agenda meeting, Docket No. TO96070519, dated August 15, 1997		XI	JA 3770 – JA 3771
AT&T's Initial Brief regarding NJ BPU's review of the parties' Interconnection Agreement, Docket No. TO96070519, dated August 15, 1997	X	XXXVI	JA 11558 – JA 11633
Letter from A. Babineau (BA-NJ) to J. Nappi (NJ BPU) enclosing BA-NJ's Reply Brief regarding NJ BPU's review of the parties' Interconnection Agreement, Docket No. TO96070519, dated August 22, 1997	X	XXXVI	JA 11634 – JA 11691
Letter from M. Otte (AT&T) to J. Nappi (NJ BPU) enclosing AT&T's Reply Brief regarding NJ BPU's review of the parties' Interconnection Agreement, Docket No. TO96070519, dated August 22, 1997		XI	JA 3772 – JA 3789

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Joint letter from M. Otte (AT&T) and A. Babineau (BA-NJ) to J. Nappi (NJ BPU) submitting BA-NJ/AT&T Interconnection Agreement for review by the NJ BPU, Docket No. TO96070519, dated September 15, 1997		XII	JA 3794 – JA 4155
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RECEIVED

Docket No. 00-2000

JUN 29 2001

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

FCC MAIL ROOM

AT&T Communications of New Jersey, Inc.,
State of New Jersey Division of the Ratepayer Advocate,
Plaintiff-Intervenor in District Court

v.

Verizon New Jersey, Inc., and
The New Jersey Board of Public Utilities, an agency;
Herbert H. Tate and Carmen J. Armenti, in their capacities
as Commissioners of the Board of Public Utilities,
Defendants in District Court

State of New Jersey Division of the Ratepayer Advocate,
Appellant

On Appeal from an Order of the
United States District Court, District of New Jersey

**REPLY BRIEF OF APPELLANT
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**

BLOSSOM A. PERETZ, ESQ.
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January 22, 2001

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Summary of Argument

Each one of appellees' arguments in this appeal -- from the assertions regarding standing and mootness to the arguments regarding statutory interpretation and Federal Communications Commission (FCC) preemption -- is based on two distinct mischaracterizations of the Board's actions. Once these characterizations are corrected, the foundation of each argument collapses, leaving exposed only the unlawfulness of the Board's ruling affirmed by the District Court.

First, the Board and Verizon assert that the Board's decision to supersede arbitrated rates with generic rates was limited to the AT&T Interconnection Agreement. That assertion is wrong. The Board announced and applied a general policy: "GENERIC RATES SHOULD SUPERSEDE ARBITRATED RATES." On several occasions, the Board itself stated orally and in writing the general applicability of its policy to supersede "any" and "all" arbitrated rates. The Board cannot change the scope of its policy through the post hoc arguments of its lawyers in this appeal.

Second, Verizon's asserts, and repeats throughout its brief, that the Board "rejected" the AT&T-arbitrated rates, not because they varied from the generic rates but because they were "flawed" and "non-Act compliant." The Board never even discussed the arbitrated rates, let alone found them unlawful. The Board merely applied its general policy of superseding all arbitrated rates to the AT&T arbitration. The Board concedes as much in its brief, when it describes its policy (as it did at the administrative